IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 340 OF 2006
IN
CRIMINAL APPEAL NO. -- OF 2006

Shri Abdul Hamid Khan Matwan ...Applicant
(Orig.Complainant)

V/s.

Mohammad Hanif Jafarali Inamdar & Anr. ...Respondents

Ms.Poonam Kardale i/b. Mr.Mandar Limaye for the Applicant.
Mr.Y.M. Nakhawa, APP for State.

CORAM : V.M. KANADE, J.

DATED : OCTOBER 8, 2007

P.C. :-

. The applicant is challenging the judgment and order passed by the 6th Judicial Magistrate, First Class, Thane, who by his judgment and order dated 3rd December, 2005 was pleased to acquit the accused for the offence punishable under Section 138 of the Negotiable Instruments Act.

2. It is the case of the complainant that the cheque was given by the respondent towards the price of consideration for booking a flat which was being constructed by the complainant. The trial Court after appreciating the evidence on record has recorded the

finding of fact that the entire amount has been paid by the accused to the complainant and thereafter, the possession of the flat was also handed over. It has come on record that the complainant was to construct a lift and the defence of the accused was towards the construction of the lift, the said cheque of Rs.50,000/- was given, however, since the lift was not constructed, the accused did not make payment. The trial Court, under these circumstances has held that there was no existing debt or liability.

3. In my view, no case is made out for grant of leave. The trial Court has considered the evidence at length. It is well settled position in law that whenever two views are possible and the trial Court has taken one view, then the High Court while exercising its jurisdiction under Section 378 of the Code of Criminal Procedure, should not substitute its own view to the view taken by the trial Court.

4. Hence, leave is refused. Appeal is dismissed.

(V.M. KANADE, J.)